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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/619,380	07/14/2003	Ty Whitaker	281-398.01	5428				
<div>44331 7590 09/13/2007 HISCOCK & BARCLAY, LLP 2000 HSBC PLAZA 100 Chestnut Street ROCHESTER, NY 14604-2404</div>								
<div>EXAMINER NASSER, ROBERT L</div>								
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,380

Applicant(s)

WHITAKER ET AL.

Examiner

Robert L. Nasser

Art Unit

3735

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/28/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-3, 5-11, 13-18, 20-24, 26-28, 30-33, 35-41 and 43-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 13-18, 20-24, 26-28, 30-33, 35-41, 43-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5 and 27, 28, 30 rejected under 35 U.S.C. 102(b) as being anticipated by Harada et al 5759157 in view of Ogura 6524257 . Harada has a device for measuring blood pressure including an inflatable chamber 10, a sensor 12 coupled to the inflatable chamber to measure information indicative of blood pressure, a control module 26 that receives the signal from the patient, a first analysis module 40 for measuring blood pressure during inflation of the inflatable chamber, a second analysis module 42 for measuring pressure during deflation of the inflatable chamber, where the second module is response to a control signal from the module that indicates that the first measurement was abnormal. Accordingly, blood pressure is measured using at least one of the first and second modules. The rate of inflation or deflation is not mentioned. Ogura teaches that it is known to continuously vary the cuff pressure by 5 mmhg/sec to measure blood pressure (see column 7, line 67). Harada appears to use the same inflation and deflation rate. Hence, it would have been obvious to modify Harada to use 5 mmhg/sec as the inflation and deflation rate, as it is merely the use of a well known rate in the art. Claim 2 is rejected in that deflation can be stepwise (see column 8, line 67). Claim 3 is rejected in that when the control signal is normal, the second module is inhibited and when it is abnormal, the second module is activated. Claim 4 is rejected in that the blood pressure includes systolic and diastolic. Claim 5 is

rejected in that the device includes a reporting module 38. Claims 27-30 are rejected in that Harada also performs the recited method, noting that the second module only measures pressure if necessary.

Claims 6, 23, 31, 46, and 50-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura, as applied to claims 1-3, 5, 27-28, and 30 above, further in view Hanna 6450966. Hanna detects whether a user is a neonate by comparing a measurement to a stored value, i.e. stored in a data base and adjusts pressurization to avoid injury to the patient. Hence, it would have been obvious to modify the combination to use such a neonate detection, to avoid injury. Claims 50, 52, 54, and 56 are rejected in that the examiner takes official notice that it is well know to provide a mode switch to activates different modes on a measurement device. Ass applied here, it would have been obvious to provide a mode switch for different sized patients.

Claims 11, 13, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura, as applied to claims 1-3, 5, 27-28, and 30 above, further in view of Taylor at al 6405076. Taylor et al includes a motion detector and allows blood pressure measurements to continue if the motion is below a threshold (see paragraph 6 in column 9). As such, it would have been obvious to modify Harada to include the noise reduction scheme of Taylor, to increase the accuracy of measurement.

Claims 14-17, 21-22, 39, 40, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura and Taylor at al 6405076, as

applied to claims 11-13 and 36-38 above, further in view of Ueno 4870973. The Harada/Taylor combination stops measurement when motion exceeds a threshold, (see column 9, paragraph 4), but it does not notify the user when motion exceeds a threshold. Ueno displays a warning when artifact is detected and measurement is stopped (see abstract, for example). Hence, it would have been obvious to modify the above combination to use such a warning, to alert the user that too much motion or noise is present. Claims 15-17 are rejected in that the examiner takes official notice that both audible and visual warnings are well known. With respect to claims 21 and 22, the examiner notes that in the context of Harada, if the first measurement is stopped due to artifact, the second measurement would be enabled. Claims 39, 40, 44, and 45 are rejected for the reasons given above.

Claims 18, 20, 41, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura, Taylor at al 6405076 and Ueno 4870973, as applied to claims 14-17, 21-22, 39, 40, and 44-45 above, further in view of Georgi 4592365. Georgi teaches that when measurement is stopped due to artifact, measurement can be resumed if the artifact level falls below the threshold within a predetermined time. Hence, it would have been obvious to modify the combination above to resume measurement, in order to save time needed to retake a measurement.

Claims 6-10, 24, 26, 32, 33, 35, and 47-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 6-

10, 24, 26, 32, 33, 35, and 47-49 define over the art of record in that none of the art teaches or suggest choosing the deflation measurement when a neonate is detected.

Applicant's arguments filed 8/28/2007 have been fully considered but they are not persuasive.

Applicant since Harada used a faster rate than 2-3 mmhg/sec to dump the pressure after measurement, it is indicative that Harada elects not to use a faster rate for cuff deflation. Whether or not this statement is true, it is the examiner's position that even if Harada elected not use a faster rate, it still could be obvious to do so.

Applicant has further asserted that Harada is far more expert than one skilled in the art. This point is not relevant to the analysis, as the test is what the art suggest to one of ordinary skill in the art and not what the art suggests to Harada or Ogura.

Applicant has further asserted that Ogura only teaches making a measurement at a faster rate during deflation, not inflation. The examiner agrees, but notes that since Harada uses the same rate during inflation and deflation, and that since inflation and deflation measurements are merely inverse of each other, the teaching would suggest to one skilled in the art to use the faster rate during both inflation and deflation.

Applicant has asserted that since both Harada and Ogura knew of higher inflation rates and did not use them, it would not have been obvious to modify Harada in view of Ogura. It is the examiner's position that there simply is no basis in the law for this position. Applicant has not provided evidence as to why Harada did not discuss using a faster inflation rate. Clearly, then, the reference does not teach away from using faster

rates, as it does not state that a faster rate is not desirable or won't work. In addition, the fact that Harada did not choose to use a faster rate does not mean that, at the time of applicant's invention, it would not have been obvious to do so.

Applicant has further asserted that the examiner has used hindsight as the only basis for the combination. It is the examiner's position that no impermissible hindsight has been used.

Applicant's discussion of the cited but not applied references has been noted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert L. Nasser
Primary Examiner
Art Unit 3735



RLN
September 4, 2007